sidered; the public also has an interest in seeing that no divorce shall be granted without proper cause. *Murphy* v. *Murphy*, 8 Phila. (Pa.) 357; 2 BISHOP, MARRIAGE & DIVORCE, § 230. So a divorce will not be granted on failure of the defendant to appear, or on admissions in his pleadings, unless the plaintiff's charges are sustained by proof. *Hill* v. *Hill*, 24 Ore. 416, 33 Pac. 809; *Ivison* v. *Ivison*, 29 Misc. 240, 61 N. Y. Supp. 118. But, since public policy requires the quiet and peaceable termination of marital strife, ordinarily the plaintiff is entitled to discontinue such a suit. *Moore* v. *Moore*, 22 N. Y. Supp. 451; *Stover* v. *Stover*, 7 Idaho 185, 61 Pac. 462; *Ashmead* v. *Ashmead*, 23 Kan. 262. Where, however, in divorce suits the validity of the marriage, and hence the legitimacy of the issue and the status of subsequent marriages, is involved, there is a strong public interest in the correct adjudication of the matter; and courts do not allow as a matter of course dismissal of the bill. *Winans* v. *Winans*, 124 N. Y. 140, 26 N. E. 293; *Winston* v. *Winston*, 21 App. Div. 371, 47 N. Y. Supp. 399. The situation ordinarily presented by suits for annulment is the same; and the court should, as the principal case holds, be able within its discretion to refuse leave to discontinue.

MECHANICS' LIENS — PRIORITY OVER MORTGAGES FOR PURCHASE MONEY TO PERSONS OTHER THAN THE GRANTOR. — A development company agreed by parol with a stockholder to convey a lot to him on consideration of the erection of a house thereon. The stockholder made a written contract with one Pettit to sell him the land, and Pettit agreed to build the house. When it was partially erected, the stockholder procured a conveyance from the company to Pettit, and the latter executed mortgages to the stockholder as security for the price agreed. Material furnished and labor performed in the construction of the house, chiefly prior to this time, not having been paid for, mechanics' liens were claimed. *Held*, that the liens take priority over the mortgages. *Everest* v. *Gault Lumber Co.*, 159 Pac. 910 (Okla.).

A mechanics' lien can only accrue against the owner of some interest in the property, legal or equitable. Since the agreement between the company and the stockholder was by parol, no equitable title passed to the latter, prior to the completion of the work agreed to. *Botsford* v. *New Haven, etc. R. Co.*, 41 Conn. 454. None could therefore pass to the sub-vendee. Now it is generally held that if a possessor having made improvements, later acquires title, the liens attach to the subsequently acquired interest. *Courtemanche* v. *Blackstone, etc. Ry. Co.*, 170 Mass. 50, 48 N. E. 937; *Weaver* v. *Sheeler*, 124 Pa. St. 473, 17 Atl. 17. But although the liens may thus relate back, they cannot actually accrue previous to the time when title is received. In the principal case, the passing of title and the giving of the mortgages were simultaneous acts. Under such circumstances a purchase-money mortgage generally takes priority over liens arising out of improvements made by the possessor. *Rochford* v. *Rochford*, 188 Mass. 108, 74 N. E. 299; *Moody* v. *Tschabold*, 52 Minn. 51, 53 N. W. 1023. But where the mortgagee is a person other than the grantor it would seem on principle that the liens should prevail. For the legal title must pass through the grantee-mortgagor, at least momentarily, in order to reach the mortgagee. In this brief passage the liens could attach. It has been held otherwise, however, so far as the mortgage is for an advance of purchase-money, on the theory that the mortgagor in substance never held more than the equity of redemption. *New Jersey, etc. Co.* v. *Bachelor*, 54 N. J. Eq. 600, 35 Atl. 745; *Campbell & Pharo's Appeal*, 36 Pa. St. 247. But the mortgagee cannot be preferred unless the interest of the grantor was free of the liens prior to the conveyance to the mortgagor. *McCausland* v. *West Duluth Land Co.*, 51 Minn. 246, 53 N. W. 464. Here the express stipulation of the grantor company that the work be done before it would convey, subjected its interest to the lien of the work when done. *Hill* v. *Gill*, 40 Minn. 441, 42 N. W. 294; *Paulsen* v. *Manske*, 126 Ill. 72, 18

N. E. 275. The shareholder therefore has no preference upon his mortgages. His interest, if any, as an unpaid vendor, independent of the mortgages, is subject to the liens for the same reason. *Bohn Manufacturing Co.* v. *Kountze*, 30 Neb. 719, 46 N. W. 1123; *Lee* v. *Gibson*, 104 Tenn. 698, 58 S. W. 330.

MUNICIPAL CORPORATIONS — TORT LIABILITY — GOVERNMENTAL FUNCTIONS — PUBLIC ZOO. — While leaning against a coyote cage located in a park maintained by the defendant city, the plaintiff, a child of four years, was bitten and scratched by the coyote. Plaintiff sues. *Held*, that she may not recover. *Hibbard* v. *City of Wichita*, 159 Pac. 399 (Kan.).

For discussion of this case, see NOTES, p. 270.

PLEADING — AMENDMENT OF DECLARATION AFTER STATUTE HAS RUN — WHETHER AN AMENDMENT FROM COMMON LAW ACTION TO STATUTORY ACTION ON THE SAME FACTS IS PERMISSIBLE. — While performing his duties, an employee was injured by a crank shaft. A statute required shafting in factories to be guarded and took away certain defenses. But the employee sued his employer for common law negligence and did not plead sufficient facts to take advantage of the statute. At the trial he sought leave to amend his statement of claim, so as to sue on the statute. In the meantime the statute of limitations had run on the case. The trial court refused leave to amend. *Held*, that this was not error. *Card* v. *Stowers Pork Packing & Provision Co.*, 98 Atl. 728 (Pa.).

While it is true that the modern tendency is to allow great freedom in the amendment of pleadings, yet courts still refuse to allow amendments introducing new causes of actions. *Church* v. *Boylston & Woodbury Café Co.*, 218 Mass. 231, 105 N. E. 883. Especially is this so when the statute of limitations has run. *Union Pacific R. Co.* v. *Wyler*, 158 U. S. 285. *Contra*, *Rowell* v. *Moeller*, 91 Hun 421, 36 N. Y. Supp. 223. *Cf. Philadelphia, etc. R. Co.* v. *Gatta*, 4 Boyce (Del.) 38, 85 Atl. 721. But some jurisdictions allow them, subject to attack by demurrer or plea. *Williams* v. *Lowe*, 49 Ind. App. 606, 97 N. E. 809; *Atchison, etc. R. Co.* v. *Schroeder*, 56 Kan. 731, 44 Pac. 1093. The question apparently presented therefore seems to be, What constitutes a new cause of action? There is much authority which accords with the principal case, in considering an action pleaded upon statutory negligence as a different cause from one pleaded on the same facts at common law. *City of Kansas City* v. *Hart*, 60 Kan. 684, 57 Pac. 938; *Despeaux* v. *Pennsylvania, etc. R. Co.*, 133 Fed. 1009. Technically such view is correct. But if strictly adhered to it would prevent all amendments after the statute had run. For a defective cause of action is no cause of action, and an amendment correcting the defect must therefore be stating a new cause of action. It would seem as if the purpose of the statute were complied with and equity done, if the test were simply, Do the facts as originally stated sufficiently identify the transaction sued for to give the defendant warning? *Cf. Miller* v. *Erie R. Co.*, 109 App. Div. 612, 96 N. Y. Supp. 244. So a number of cases approximating the principal case have allowed the amendment. *Vickery* v. *New London North R. Co.*, 87 Conn. 634, 89 Atl. 277, 279; *Miller* v. *Erie R. Co.*, *supra*; *Oulitic Stone Co. of Indiana* v. *Ridge*, 174 Ind. 558, 91 N. E. 944. This liberal tendency is further indicated in a holding that amendments from the law of one jurisdiction to that of another are to be allowed after the statutory period. *Missouri, etc. Ry. Co.* v. *Wulf*, 226 U. S. 570.

RULE AGAINST PERPETUITIES — LIMITATIONS OF THE RULE AGAINST A "POSSIBILITY ON A POSSIBILITY." — A testator devised lands in trust for his son Thomas, a bachelor, for life; with a remainder for life to any woman whom Thomas might marry; remainder in fee to the children of Thomas at twenty-one, or in default of such children, to the other children of the testator.